IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6303 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIGIL POLYMERS LTD & 1 - Petitioner(s)
Versus
UNION OF INDIA & 2 - Respondent(s)

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Appearance :
M/S TRIVEDI & GUPTA for Petitioner(s) : 1 - 2.
MR Purish MALKAN for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 12/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

By this petition under Article 226 of the Constitution of India, the petitioners seek to challenge the constitutional validity of Section 27-A of the Customs Act.

2. The petitioners had imported certain articles under 15 different bills, the bills were not accepted by the customs authorities, and in view of the dispute the petitioners were required to deposit the duty on the said items. The duty was deposited on 1.12.1996. The Customs Officer did not make any further order in the matter. Therefore an application for finalisation of the assessment under Section 18(2) of the Customs Act was made by the petitioners. The Assessing Officer made a final order, and, even without an application from the petitioners, ordered to refund insofar as 12 bills were concerned. The petitioners say and submit that they received the refund on 11.6.1997 though they were forced to deposit the said amount on 1.12.1996, they would

be entitled to interest from the date of deposit till its refund or repayment to the petitioners.

2. Learned counsel for the petitioners invited our attention to Section 27-A of the Act, which reads as under;

> **27A. Interest on delayed refunds.** – If any duty ordered to be refunded under sub-section (2) of Section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, [not below five percent] and not exceeding thirty per cent per annum as is for the time being fixed [by the Central Government, by notification in the Official Gazette], on such duty from the date immediately after the expiry of three months from the date of receipt of such

application till the date of refund of such duty :

Provided that where any duty, ordered to be refunded under sub-section (2) of Section 27 in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty :

Explanation.__ Where any order of refund is made by the Commissioner(Appeals), Appellate Tribunal or any Court against an order of the [Assistant Commissioner of Customs] under sub-section (2) of Section 27 the order passed by the

> Commissioner(Appeals), Appellate Tribunal or, as the case may be, by the court shall be deemed to be an order passed under that sub-section for the purposes of this section.]

As Section 27-A provides a different standard than what is applicable to the payment of duty, the provisions contained in Section 27A are ultra vires the Constitution. He also submits that if Section 28AB provides for interest on delayed payment of duty from the date it became payable then the petitioners would also be entitled to interest from the date of the deposit which was unvoluntary. Referring to Section 214 and 215 of the Indian Income Tax Act, it is submitted that in the said Act the Government had made provisions for payment of equal interest on the amount to be deposited or on the amount which is required to be refunded to the assessee and such interest would be declared from the date it became payable or it was in fact deposited. It

is submitted that, if under Section 28AB a person is liable to pay interest at a particular rate then the same rate of interest should be made applicable but it should be applied from the date of deposit.

3. Learned counsel for the respondents, other hand, submitted that provisions of Section 27A would not apply to the present matter and as such the petitioners would have no authority to challenge the constitutional validity of Section 27A of the Act. He submits that liability of the Department to pay interest to the assessee under Section 27A would arise only if an application is made by the assessee. According to him and undisputedly no application came to be made by the petitioners but immediately after the orders were made, refund was also made in favour of the petitioners.

4. After hearing the parties, we are of the

opinion that, provisions of Section 27A would not be applicable to the present petitioners because Section 27A applies in a case where any duty is ordered to be refunded, under sub-section (2) of Section 27 to an applicant, is not refunded within 3 months from the date of receipt application under sub-section (1) of Section 27, then such applicant is to be paid interest. In the present case, provisions of Section 27A cannot be made applicable to the case of the present applicant. As provisions of Section 27A are not applicable to the case on hands, we are not required to examine the constitutional validity. However, we would refer to a judgment of the Supreme Court reported in ***2005 (179) E.L.T. 15 (S.C.) in Commissioner of Central Excise, Hyderabad Vs. I.T.C. Ltd. = 2005 Vol.13 S.C.C. 689,*** wherein, in relation to Central Excise Act, a Circular was issued by the concerned department that interest would be payable on completion of 3 months from the date

of the order. The Supreme Court accepted the said Circular. In the present case, without even an application, refund has been ordered in favour of the petitioners.

5. As the provisions of the law, correctness of which has been challenged before us, are not applicable to the present case, we are not required to examine its validity. The petition is dismissed. No costs. Rule is discharged.

[R.S. Garg, J.]

[M.R. Shah, J.]

RMR.